

**APPLICATION PROCESS,  
SCORING SYSTEM,  
AWARD OF GRANTS ,  
AND  
STANDARDS AND GUIDELINES  
FOR  
THE MICHIGAN AGRICULTURAL PRESERVATION FUND**

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## TABLE OF CONTENTS

<b>Application Process</b>	
Application Prequalification	3
Submitting an Application	4
<b>Scoring System</b>	
Parcel Related Points	7
Agricultural Capacity and Productivity	7
Conservation Plan	7
MAEAP Participation	7
Local Program Related Points	8
Local Farmland Preservation Commitment	8
Matching Funds	8
Intergovernmental Cooperation	9
Local Planning Training	10
Local Capacity to Execute	10
Local Agricultural Planning	10
Local Agricultural Promotion	11
Agricultural Board Discretionary Points	12
<b>Award of Grants</b>	
Calculate Weighted Request for Application	13
Prorate Weighted Request to Allocate Available Funds	14
<b>Standards and Guidelines</b>	
Matching Funds	15
Maximum Amount to be Paid Per Acre	15
Repurchase of Development Rights	16
Monitoring and Enforcement	17
Conservation Easement Content	18
Definition of Eligible Farmland	19
Disbursement of Funds	20
Method to Establish the Price to be Paid	21
Criteria for Parcel Selection	22
Definitions	22

## **APPLICATION PROCESS FOR GRANTS FROM THE AGRICULTURAL PRESERVATION FUND**

The Michigan Agricultural Preservation Fund and Agricultural Preservation Fund Board were established in 2000 under Part 362 of the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended. The act provides for the establishment of the agricultural preservation fund, the creation of the board, the development of an application procedure, selection criteria and the adoption of various standards and guidelines for the awarding of grants by the Board. This document establishes the application procedure, selection criteria and standards and guidelines for the Fund.

Applications made to the Agricultural Preservation Fund Board (hereinafter referred to as "Board") will be reviewed in the following manner:

### **APPLICATION PREQUALIFICATION**

Prior to applying for a grant an entity must be certified as being qualified and eligible to make a grant application. In order for an entity to qualify the following minimum standards must be met:

- 1) The entity has a comprehensive land use plan and it has been adopted within the last 10 years and reviewed and/or updated within the last 5 years. (See Part 362 of the Natural Resources and Environmental Protection Act, and Public Act 168 of 1959 as amended, and Public Act 282 of 1945 as amended.)
- 2) The comprehensive land use plan of the applying entity contains an agricultural preservation component, consisting of:
  - a) A future land use map indicating the areas intended for agricultural preservation,
  - b) Text describing the strategies intended to be used in order to preserve the agricultural land, including Purchase of Development Rights (PDR) but should include other techniques.
  - c) Language indicating why farmland should be preserved in the community (cost of services studies, economic benefit to the community etc.)
  - d) A description of how and why the preservation area was selected.

As required under the County Zoning Act, Townships participating in a County PDR program that have zoning must pass a resolution agreeing to participate and any County PDR purchase must be consistent with the Township comprehensive land use plan. Therefore the comprehensive land use plan of a Township with zoning that is participating in a county program must contain the elements listed above and be certified as containing those elements.

- 3) PDR ordinance has been adopted that is consistent with Part 362 of the Michigan NREPA, the County or Township Zoning Act and the standards established by the Board.

- 4) The entity has adopted an application procedure and scoring system consistent with Part 362 of NREPA and their ordinance.
- 5) Draft easement language has been adopted that is acceptable to the state and the local unit of government.
- 6) A method has been established to determine the amount to be paid to the landowner consistent with the provisions of Part 362 of NREPA.
- 7) A plan for monitoring the farmland conservation easements has been established.

## **SUBMITTING AN APPLICATION**

If a local applying entity has received certification as a qualified entity and intends to submit an application for a grant under the Michigan Agricultural Preservation Fund, the application would be submitted in the following manner:

1. All entity applications must be on an application form developed, as required by statute, by the Michigan Department of Agriculture (Department).
  - a) Items to be included on the application form:
    - 1) Name and address of the entity applying for the grant.
    - 2) Date of PDR program certification by the Department.
    - 3) Description of the applying entity submitting the application. (County, Township or group of Townships, City, or Village.)
    - 4) Estimated value of the development rights of the parcels submitted for in the grant.
    - 5) Amount of money requested in the grant.
    - 6) Total acres included in the grant application.
    - 7) Percent of prime and unique soils in the application.
    - 8) Percent of the land in the application covered by a conservation plan.
    - 9) Number of farms verified under the Michigan Agricultural Environmental Assurance Program (MAEAP).
    - 10) Percent of land in the applying entity jurisdiction designated for farmland preservation on the Comprehensive land use plan.
    - 11) The amount of matching funds to be provided as a percent of the total estimated value of the development rights of the parcels submitted for the grant. (The minimum match must be at least 25% of the estimated total value of the development rights.)
    - 12) Description and supporting documentation of intergovernmental cooperation.
    - 13) Description of local planning training.
    - 14) Indication of the local capacity to execute a local PDR program.
    - 15) Efforts to encourage, enable and promote agriculture.
    - 16) Explanation of how the entity may qualify for discretionary points.
2. Each application must be accompanied by a list of the parcels for which grant money is requested including the following information:
  - a) The name of the landowner.
  - b) The size of the parcel.

- c) The number acres of land in agricultural production (note: parcels submitted for grant funds must meet the minimum requirements for agricultural land as set forth in Part 361 of NREPA).
  - d) A general legal description giving the Township, Range and Section within which the parcel is located.
  - e) The estimated price to be paid for the acquisition of the development rights for the parcel.
  - f) The amount and percent of matching funds to be provided for the specific parcel.
  - g) The source of matching funds.
  - h) The priority ranking of the parcel as compared with the other parcels submitted in the application.
  - i) Certification that the surface mineral rights, such as sand, gravel, top soil or other material the removal of which would negatively affect the productivity of the farmland, are controlled by the landowner or that a third party holder of the surface mineral rights would consent to subordination of those rights to the interest of the jointly held PDR easement.
  - j) The current State Equalized Value for the parcel.
  - k) Local government certification that the land meets with all local ordinance requirements.
- 3. A map or maps must be provided indicating the location of the parcels submitted with the application.
  - 4. A signed affidavit or option must accompany the application indicating the willingness of the landowners to convey their development rights and to enter into an agricultural conservation easement jointly with the local government and the State of Michigan.

Completed applications are submitted to the Department following a call for application by the Board. Applications are to be forwarded to:

Michigan Dept. of Agriculture, ESD  
Farmland Preservation  
Attn: Ag. Preservation Fund  
PO Box 30449  
Lansing, MI 48909

## **APPLICATION SCORING SYSTEM INTRODUCTION**

The Board has determined that the best approach to issuing grants to local units of government for purchase of development rights programs is to defer to local government scoring systems rather than to review individual parcels submitted by the applicants. Grants will be made based on points awarded considering various public policy objectives. All local PDR programs shall, at a minimum, include items (a) through (e) listed below in their parcel scoring system and selection process. The weight given to each category is at the discretion of the local entity. (The following wording is, in part, an excerpt from Part 362 of the Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994 as amended, being more specifically MCL 324.36205.)

- (a) Farmland that has a productive capacity suited for the production of feed, food and fiber.
- (b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.
- (c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.
- (d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.
- (e) Farmland that will help to enhance other local open space initiatives in the community such as connecting an open space or wildlife habitat corridor, or in preserving unique habitats/natural features that benefit local conservation efforts. (This provision is not in statute but was adopted by the Board.)

## SCORING SYSTEM

The following system will be used by the Board to prioritize grant applications from Local PDR Programs:

### PARCEL RELATED POINTS

#### 1. AGRICULTURAL CAPACITY AND PRODUCTIVITY – total possible points: 150

***Policy Objective:*** To preserve Michigan's prime and unique agricultural land.

**Points will be awarded on the following basis:** Multiply the percent of the land area in the application that is classified as prime and/or unique agricultural land, as defined by the USDA-NRCS, times 150

#### 2. CONSERVATION PLAN – total possible points 90

***Policy Objective:*** The public investment in farmland preservation should not only require legal preservation of the farmland but also functional preservation of the farm ground. The presence and execution of a conservation plan on the property is an indication that the landowner has made a commitment to preserve the soil from erosion and degradation. To be awarded points conservation plans used under this portion of the scoring system are required to be incorporated into the baseline documentation for the parcel and conformance with the conservation plan will be part of the monitoring function of the local unit of government.

**Points will be awarded on the following basis:**

Multiply the percent of land in the grant application that will be subject to a conservation plan, approved by a NRCS Certified Conservation Planner, as meeting ALL applicable quality criteria contained in the current Michigan USDA-NRCS Field Office Technical Guide (eFOTG) times 90 points.

#### 3. MAEAP PARTICIPATION – possible 60 points

***Policy Objective:*** The MAEAP program (Michigan Agricultural Environmental Assurance Program) assists farms in establishing environmentally sound agricultural practices. Farms that are certified under the MAEAP program should receive preferential treatment for purchase of development rights programs because environmentally sound agricultural operations contribute to the sustainability of the agricultural operation.

**Points will be awarded on the following basis:** 60 points will be awarded if any of the farms in the grant application are verified through MAEAP.

## **LOCAL PROGRAM RELATED POINTS**

### **4. LOCAL FARMLAND PRESERVATION COMMITMENT - total possible points 145**

***Policy Objective:** To encourage local units of government to plan for the preservation of farmland in their communities.*

**Points will be awarded on the following basis:**

The number of acres of farmland designated for farmland preservation In the comprehensive land use plan of the entity applying for the grant divided by the total number of acres of land in farms (as defined in the most recent census of agriculture in the Michigan Agriculture Statistic Service) in the applying entity, times 145.

### **5. MATCHING FUNDS – total possible points: 150**

***Policy Objective:** To encourage local commitment in farmland preservation as evidenced by the type and degree of financial participation at the local level.*

Each application will be awarded points based on the amount of matching funds from other sources than the Michigan Agricultural Preservation Fund that are committed as part of the entire application. Greater priority will be given to applications with a cumulative non-state match greater than the required 25%. Federal funds may not be used to meet the 25% match requirement.

Matching funds can include funds from a local unit of government, donations by the owner of the easement rights to be acquired or non-governmental organizations such as conservancies or other sources. Matching funds **must be verified** as available cash match at the time of application or a letter of commitment that binds the landowner's in-kind donation. Without the binding commitment or verified cash match, the match cannot be taken into account in awarding points.

Cash matching funds from local units of government (county, township, city or a combination thereof) will be given greater priority than in-kind landowner donations or other sources of matching funds.



**Points will be awarded on the following basis:** The following two categories will be used to calculate the points to be awarded with the combined score not exceeding a total of 150 points for this category:

Landowner/Other Source Points -Max 50:

2 points for every % of match over 25% (i.e. 26% = 2 points)

Local Govt. Points- Max 100:

2 points for every % match contributed by a participating unit of government (no minimum)  
(i.e. 25% local govt. match = 50 points)

## **6. INTERGOVERNMENTAL COOPERATION – possible 120 points**

***Policy Objective:** Farmland Preservation should be encouraged to occur in a cross jurisdictional fashion. Farmland preservation that ends at jurisdictional boundaries will be less effective since the impacts of land conversion in a non-protected area will spill over into adjacent protected lands.*

**Points will be awarded based on the following schedule:**

1. **Multi-County Program:** When two or more counties have entered into an agreement under the Urban Cooperation Act of 1967, PA 7 of 1967 for the purpose of operating a PDR program, 80 points will be awarded. Additional points will be awarded by multiplying the percent of land area in the counties that are participating entities (eligible to apply to the multi-county program for development rights purchase) times 40 points.
2. **County Program:** 60 points will be awarded for county PDR programs. Additional points will be awarded by multiplying the percent of land area in the county that are participating entities eligible to apply to the county program for development rights purchase times 60 points
3. **Multi-Township Program:** When two or more townships have entered into an agreement under the Urban Cooperation Act of 1967, PA 7 of 1967 for the purpose of operating a PDR program, 80 points will be awarded. Additional points will be awarded by multiplying the percent of land area the multiple townships represent of the county times 40 points.
4. **Township Program:** A township PDR program will be awarded 60 points.

For purposes of Multi-County and single County programs, participating entities are townships and cities that have zoning authority and have passed a resolution agreeing to participate in the Multi-County or County program. If a township does not have zoning authority and a Multi-County or County PDR program has been established, such a township would be considered as a participating township for purposes of this criterion, since the County would have zoning authority.

For each incorporated municipality (city or village) that has passed a resolution to participate in a Multi-County, County, Multi-Township or Township program and has agreed to provide in excess of \$50,000.00, in the application year, to assist the program in development rights purchases, an additional 20 points will be awarded.

The combination of points given under this category shall not exceed 120.

## **7. LOCAL PLANNING TRAINING – possible 75 points**

***Policy Objective:*** A viable farmland preservation program includes a variety of land use management techniques executed at the local level. The ability to execute these programs is directly related to the training and skill level of the appointed public officials charged with land use planning and implementation. Appropriate training is essential to execute a sustainable farmland preservation program.

**Points will be awarded on the following basis:** Multiply the percent of the planning commissioners in the participating entities that have completed planning commissioner training under a program such as the Citizen Planner program, the Michigan Society of Planning, the Michigan Townships Association and/or a similar program, times 75.

## **8. LOCAL CAPACITY TO EXECUTE – possible 60 points**

***Policy Objective:*** Local purchase of development rights programs must be appropriately staffed to be successful. Local programs that have allocated appropriate staff support and have acquired and monitored conservation easements in the past have the best chance for success.

**Points will be awarded on the following basis:** 30 points will be awarded if the local PDR program has allocated at least 1/2 FTE (full time equivalent) position, either with in house staff or via consultant, to execute the local PDR program. An additional 30 points would be awarded for those programs that have acquired and monitored at least one agricultural conservation easement in the past year.

## **9. LOCAL AGRICULTURAL PLANNING – possible 45 points**

***Policy Objective:*** Farmland preservation efforts are successful only when the local agricultural economy is sustainable and viable. Local units of government can have a significant impact on the viability of agriculture through various incentives and actions such as encouraging direct marketing of agricultural products, providing for value added agriculture in

*the community and recognizing agriculture as an important part of the local economy.*

**Points will be awarded on the following basis:** 45 points will be awarded to local PDR programs that have provided a report or plan indicating expected actions on the part of the community to enhance agriculture, said plan containing implementation strategies and time lines for execution. **Examples** of topics that may be found in such a report include but are not limited to:

- *Create zoning to allow for roadside sales of agricultural products from the farm.*
- *Allow for opportunities to establish and operate value added activities on farms including processing, packaging and marketing of agricultural products by the producer.*
- *Create zoning regulations that allow for recreational agriculture such as u-pick operations, corn mazes, farm tours and related entertainment so that agriculture can provide a tourist function in the community and agriculture can be introduced to non-farm residents.*
- *Establish planning requirements that reduce the impact of land uses developed adjacent to farms by requiring a buffer on the development land between the development and the agricultural use.*
- *Take actions to inform non-farm residents that farming is an important component of the economy of the community. Ranges of actions could include “hands on” farm experiences for non-farmers, and activities that bring city and farm residents together.*

#### **10. LOCAL AGRICULTURAL PROMOTION – possible 15 points**

***Policy Objective:*** *The success of farmland preservation and agriculture in general is tied to the awareness and concern for continued viability of agriculture in the community. A financial commitment on the part of the local unit of government is a measure of the awareness and commitment of that local government to continued agricultural viability.*

**Points will be awarded on the following basis:** 15 points will be award to local PDR programs that have allocated at least \$10,000 to assist in the promotion of agriculture in the community.

## AGRICULTURAL BOARD DISCRETIONARY POINTS

### 11. AGRICULTURAL PRESERVATION BOARD DISCRETION – total points: 90

***Policy Objective:*** *The Agricultural Preservation Fund Board may award additional points to each application based on additional characteristics, as determined by the Board, that demonstrate additional efforts by the applicant to complement farmland preservation efforts. The Board retains the right to withhold additional points but in awarding points, the Board will provide the basis for the additional points.*

In awarding discretionary points, the Board may consider factors such as:

- (a) The extent to which the awarding of the grant will act as a demonstration project in the community to further the goals of farmland preservation.
- (b) The extent to which the community has established a longer-term funding commitment to protect additional farmland in the future (*e.g. bonds, millages, etc.*).
- (c) The extent to which the local government has incorporated a community wide visioning process involving a wide variety of stakeholders in the process of developing and updating the comprehensive land use plan.
- (d) The extent to which the local government has adjusted their comprehensive land use plan, in a sustainable fashion, to accommodate density lost as a result of the designation of farmland preservation in the plan, by increasing density in other areas (or plans if local governments are working in cooperation).
- (e) The extent to which the comprehensive plan was developed in consultation with local entities responsible for supporting infrastructure such as school districts, road commissions, drain commissions and the like.
- (f) The extent to which the farmland preservation program has connected to other resource conservation efforts such as trails, watersheds, wetlands, dunes and other natural resources and features.

## AWARD OF GRANTS

(Note to Applying Entities: This section provides direction to the Board in the allocation of funds. It has been presented in this document so that you may see the manner in which funds are to be allocated and is for information purposes only.)

If a county has met the requirements for qualifying to make an application to the state, townships within that county may only submit an application through the county program. If a county program has not been established, a township or group of townships may submit an application to the Fund.

As required by the County Zoning Act (MCL 125.232), the county shall not purchase development rights from land subject to a city, village, or township zoning ordinance unless all of the following requirements are met:

- (a) The development rights ordinance provisions for the PDR program are consistent with the plan upon which the city, village, or township zoning is based.
- (b) The legislative body of the city, village, or township adopts a resolution authorizing the PDR program to apply in the city, village or township.
- (c) As part of the application procedure for the specific proposed purchase of development rights, the city, village, or township provides the county with written approval of the purchase.

The Agricultural Preservation Fund Board will use the following formula as a guideline in determining the amount of state grant dollars:

### STEP ONE: CALCULATE WEIGHTED REQUEST FOR APPLICATION

After each application is scored, the amount of state funds requested by each individual application will be weighted based on the individual application score, as a percentage of the highest score attained in the application cycle.

(Individual Application Score)

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X (Funds requested) = Weighted Request \$

(Highest Score Attained in Application Cycle)

#### *Example of Calculation Weighted Request Amount for Individual Application*

<b>Application Score</b>	<b>Maximum Attained Score</b>	<b>Percent of Maximum Score</b>	<b>Funds Requested in Application</b>	<b>Weighted Request Amount</b>
850	850	100%	\$1,000,000	\$1,000,000
560	850	66%	\$1,000,000	\$660,000
425	850	50%	\$1,000,000	\$500,000
280	850	33%	<u>\$1,000,000</u>	<u>\$330,000</u>
		<b>TOTAL</b>	<u>\$4,000,000</u>	<u>\$2,490,000</u>

## STEP TWO: PRORATE WEIGHTED REQUEST TO ALLOCATE AVAILABLE FUNDS

The following formula will be used as a guideline to award grants based on the total amount of state funding that is available for the application cycle. Grants will be awarded based on available funds and individually adjusted based on the weighted application request relative to the sum of all weighted requests.

$$\frac{(\text{Weighted Request Amount})}{(\text{Sum of all Weighted Request Amounts})} \times (\text{State funds available}) = \text{Grant \$}$$

*Example of Grant Allocation Based on Available State Funding*

<b>Application Request</b>	<b>Weighted Request</b>	<b>Sum of all Weighted Requests</b>	<b>Relative Percentage</b>	<b>State Funds Available</b>	<b>Amount of Grant</b>
\$1,000,000	\$1,000,000	\$2,490,000	40%	\$2,000,000	\$800,000
\$1,000,000	\$660,000	\$2,490,000	27%	\$2,000,000	\$540,000
\$1,000,000	\$500,000	\$2,490,000	20%	\$2,000,000	\$400,000
<u>\$1,000,000</u>	<u>\$330,000</u>	\$2,490,000	<u>13%</u>	\$2,000,000	<u>\$260,000</u>
\$4,000,000	\$2,490,000		100%		\$2,000,000

The Board reserves the right to withhold a grant if the combination of state and local funds will not be sufficient to accomplish at least one purchase of development rights in the community or if there are other reasons that, in the opinion of the Board, warrant withholding of the grant. When determining to withhold a grant the Board should consider how said withholding is in the best interest of the citizens of the state. The amount of grant funding based on this formula guideline cannot exceed the actual amount of state grant funds requested in the application.

## STANDARDS AND GUIDELINES

The purpose of this document is to list those standards and guidelines established by the Board. This list is to be provided to all communities intending to apply for grant money under the program.

### MATCHING FUNDS

The following sections of the statute address the provision of matching funds:

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

Sec. 36205.

(1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

**1. STANDARD:** Matching funds submitted with a grant application may be from a local unit of government, the owner of the easement rights to be acquired, other sources or any combination of sources. Federal funds may not be used to meet the 25% match requirement.

**2. STANDARD:** The minimum amount of matching funds required to submit an application is 25% of the estimated value of the development rights to be paid for all parcels submitted in a particular grant application.

### MAXIMUM AMOUNT TO BE PAID PER ACRE

The following section of the statute concerns the maximum amount to be paid per acre:

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

**3. STANDARD:** A maximum amount of \$5,000 per acre may be paid from the Agricultural Preservation Fund toward the purchase price of an easement.

## REPURCHASE OF DEVELOPMENT RIGHTS

The following section of the statute concerns the repurchase of conservation easements:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

**4. STANDARD:** A local government PDR ordinance shall provide for the repurchase of development rights by the landowner. If the local unit of government and the State jointly holds an agricultural conservation easement the following standards for review, approval and repayment will be used by the State.

- 1) The State will use those standards listed in Section 36111b(7) of NREPA for approval of repurchase, limited to those provisions listed in Section 36111a(1)(a).
- 2) If approval for repurchase is granted the landowner must repay the current fair market value of the rights, as determined by a certified appraiser, at the time of repurchase.
- 3) A repayment received shall be allocated to the local unit of government and the State in the same proportion as the proportion for the original purchase of the development rights of the parcel.
- 4) Funds returned to the State shall be placed in the Agricultural Preservation Fund established under Part 362 of NREPA.

A local entity may have standards for the repurchase of development rights that are more restrictive than the standards established by the Agricultural Preservation Fund Board.

The standards for repurchase under Section 36111(b)(7) of NREPA are as follows:

Section 36111(b)(7) An agricultural conservation easement shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. An agricultural conservation easement may be terminated if the land, as determined by the commission of agriculture, meets 1 or more of the criteria described in section 36111a(1)(a) to (d). An agricultural conservation easement or portion of an agricultural conservation easement shall not be terminated unless approved by the local governing body and the commission of natural resources and the commission of agriculture. If an agricultural conservation easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to acquire agricultural conservation easements on additional farmland under section 36111(10).



The criteria described in Section 36111a(1)(a) are as follows:

- (a) The local governing body determines 1 or more of the following:
  - (i) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.
  - (ii) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.
  - (iii) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland.
  - (iv) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

## **MONITORING AND ENFORCEMENT**

The following section of the statute concerns the monitoring of agricultural conservation easements:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

- 5. STANDARD:** Unless otherwise agreed to by the State, the enforcement and monitoring of the easement shall be the responsibility of the local unit of government. Monitoring of easements shall occur no less than once a year.
- 6. STANDARD:** The participating local unit of government shall file with the Agricultural Preservation Fund Board, no later than January 31, a copy of the inspection reports for inspections conducted during the prior year, and compile an annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.
- 7. STANDARD:** Adequate provision shall be made in the easement language for enforcement by the State in the event that the local government fails to adequately enforce the provisions of the easement. Included in the easement shall be provision for the reimbursement to the State for expenses in the event the local unit of government fails to enforce the provisions of the easement. The monitoring and enforcement of an easement by the State due to the failure of the local unit of government to do so, does

not obligate the State to continue the monitoring and enforcement of the provisions of the easement in the future.

**8. STANDARD:** In order to provide for monitoring of the easement a baseline report shall be developed documenting the condition of the land and structures on the easement site. The baseline report shall contain the following minimum components:

1. Description and background of the property.
2. How the development rights were acquired.
3. How the parcel was selected.
4. General location.
5. Intent of the grantor.
6. Physical environment (topography, soils, vegetation, human made structures, zoning, etc.)
7. A photograph, aerial photos and maps of the parcel and vicinity.

**GUIDELINE:** Monitoring is recommended to be completed in the following manner:

1. A written notice of the visit to be conducted should be mailed by certified mail to the owner at least 10 days prior to the visit.
2. A monitoring visit should be performed between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday or a date and time agreeable to the local unit of government and the landowner.
3. Within 10 days of conducting the visit the local unit of government should prepare a written report setting forth the following information:
  - a) The identification of the land visit.
  - b) The name of the owner of the farmland at the time the easement was originally acquired and the name of the current owner.
  - c) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the agricultural conservation easement.
  - d) A statement of whether the provisions of the agricultural conservation easement have been observed.
4. A copy of the report should be mailed by certified mail to the landowner.

## **CONSERVATION EASEMENT CONTENT**

The following statutory provisions concern the agricultural conservation easement:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

- (2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:
- (a) Whether the permitted uses adversely affect the productivity of farmland.
  - (b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.
  - (c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.
  - (d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.
- (5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

**9. STANDARD:** Any jointly held agricultural conservation easements must contain the following minimum provisions:

- 1. Purpose of the easement.
- 2. Restrictions placed on the property.
- 3. Permitted uses.
- 4. Rights of the grantee.
- 5. Grantee remedies, including enforcement and monitoring.
- 6. Notice to under take permitted actions.
- 7. Ownership costs and liabilities.
- 8. Amendment provisions. (Amendment provisions shall be restrictive rather than permissive.)
- 9. Successors shall be bound by the easement.

## **DEFINITION OF ELIGIBLE FARMLAND**

**10. STANDARD:** In order to qualify for submission of a grant, each parcel submitted in an application must meet or exceed the definition of "farmland" as found in Section 36201(h). This definition reads as follows:

- (h) "Farmland" means 1 or more of the following:
- (i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.
  - (ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income

- from agriculture of \$200.00 per year or more per acre of cleared and tillable land.
- (iii) A farm designated by the Department of Agriculture as a specialty farm in 1 ownership that has produced a gross annual income of \$2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.
  - (iv) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

## DISBURSEMENT OF FUNDS

The following sections of the statute concern the awarding of grants by the Board:

324.36206 Awarding of grants and requirements for agricultural conservation easements.  
Sec. 36206.

(1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

- 11. STANDARD:** Funds awarded to a local unit of government for the purpose of purchasing an agricultural conservation easement will be disbursed to the landowner at the time of closing of the purchase. If the local unit of government is utilizing a time payment option the grant money may be distributed to the local unit of government at the time of closing.
- 12. STANDARD:** Funds awarded to a local unit of government under a grant from the Agricultural Preservation Fund must be expended within 2 years of the date the grant award is made. The Agricultural Preservation Fund Board may grant an extension of the 2 year time period upon request by the local unit of government for such an extension. Such an extension will only be granted once based on a finding by the Board that such an extension is reasonable.
- 13. STANDARD:** Funds awarded to a local unit of government shall be utilized by that local government to purchase the development rights on parcels submitted as part of their grant application. The local government may submit, as part of their grant request, a secondary or alternative list of parcels upon which the local unit of government may chose to acquire the development rights in the event that a landowner in the primary list submitted with the grant application does not complete the transaction. If a landowner in the primary does not complete the sale of their development rights, the local

government may utilize awarded funds for parcels in the secondary list in priority order, once all purchase in the primary list have been completed.

## **METHOD TO ESTABLISH THE PRICE TO BE PAID**

The following section of the statute concerns the manner in which a local unit of government may determine the price to be paid for the conservation easements purchased with grant money:

324.36203 Eligibility requirements for a local government to submit a grant application.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(i) An application procedure.

(ii) The criteria for a scoring system for parcel selections within the local unit of government.

(iii) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

**14. STANDARD:** As listed in statute local units of government may utilize an appraisal, bidding or formula-based system to determine the price to be paid for development rights. Prior to submission of a grant application local programs must receive certification by the department that the method to determine the price to be paid is based on sound principles to provide an equitable value to the participating landowner. In no case should the value paid to the landowner for their development rights exceed the market value of the property in question.

## CRITERIA FOR PARCEL SELECTION.

The following section of the statute concerns criteria that shall be used by local units of government to select parcels for development rights purchase and for inclusion in the grant submission process.

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

- (a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.
- (b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.
- (c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.
- (d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.
- (e) Farmland that will help to enhance other local open space initiatives in the community such as connecting an open space or wildlife habitat corridor, or in preserving unique habitats/natural features that benefit local conservation efforts. (This provision is not in statute but was adopted by the Board.)

**15. STANDARD:** At a minimum, all local programs shall consider items (a) through (e) in their scoring system and selection process. The weight given to each category is at the discretion of the particular local unit of government program. Other selection criteria may be utilized by the local units of government in addition to the ones listed in Section 36205 of the statute.

## DEFINITIONS

(A) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(B) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed

crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(C) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(E) "Entity" and "Participating Entity" means a township, a group of townships working in cooperation, a county, a group of counties working in cooperation, a township or county or group of townships or a group of counties working in cooperation with a city, that meets the qualification requirements for applying to the Board.